App. F. IX-4

193 (Law)

File No. 109-36

Serial Nos. 1-4

Previous References.

Law 100-30-5 & 6

" 8-32-(8+9

" 8-n-(1-7)

Letter References. (10-13)

Law 9-35, 57, 69-70

Law 135-43, 224,

PRESERVED

Preserve

(14)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 4

Part B for May 1938.

SUBJECT.

Second appeal No 212/38-84
On the file of the High Court

SL-4 — To the Secretaries to all Heads of Departments

WD 0295—GPB—22,500—18-8-37 No. P. 6062-121 dt 2-5-38

Invite attention to circular No P 6236 dated 31-3-38 issuing instructions to all disbursing officers in the State in regard to the need for complying with in regard to the need for complying with warrants of attachment of pay of officials

dt 13/6/38

6307 [illegible] 35

In reply please refer to
No. 173

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 11th April 193 6

Law 109-36-1

FROM

A. R. NAGESVARA IYER, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

GENERAL DEPT.
14 APR. 1936

To

The General Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE.

SIR,

With reference to Government Order No.P.4245-49/ Law. 8-32-7 dated the 9th March 1934, I have the honor to state that Second Appeal No.212 of 1933-34 on the file of the High Court of Mysore, (The Government of Mysore VS. Saraf Venkatappa) came on for disposal on 26th March 1936 and that after hearing arguments, - Judgment was pronounced allowing the appeal.

2. A copy of the Judgment has been applied for and the same will be sent to you as soon as it is received

received in this office.

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

CSN.

Serial No.

Subt for perusal

Dft appt a cop of this wire be sent to the Dy. Transkr.

The copy of the draft maps awaited

TSD 16/6

WD 03594—GPB—30,000—18-7-35

NOTE—Contn Sheet.

Sec B (21-6-36) 18/4

Sec B for Secretary 20/4

7443/35

In reply please refer to
No. 89 S

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 5th June 193 6.

Law 109-36-2

FROM

A. R. NAGESVARA IYER, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The General Secretary to the Govt
of H. H. The Maharaja of Mysore
BANGALORE.

GENERAL SECRETARIAT
7 JUNE 1936

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE
BANGALORE
9 JUNE 1936

SIR,

In continuation of my letter No.773 dated the 11th April 1936, I have the honor to forward herewith, for the information of Government, a copy of the Judgment passed in Second Appeal No.212 of 1933-34 on the file of the High Court of Mysore, (Government of Mysore VS. Saraf Venkatappa).

I have the honor to be,
Sir,
Your most obedient servant,

N. Nageswara Iyer
Government Advocate.

CSN.

1) Subt for perusal
2) 1st 9/6 (1st member)
3) 9/6
4) Whether the Govt has been moved in the matter?
5) 11/6
6) Law - Please enquire
7) 12/6

General
Secr

In reply please refer to
No. 85

7443/35

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 5th June *193* 6.

Law 109-36-2

FROM

A. R. NAGESVARA IYER, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The General Secretary to the Govt
of H. H. The Maharaja of Mysore
BANGALORE.

GENERAL SECTT. -7 JUNE 1936

OFFICE OF THE GOVERNMENT ADVOCATE IN MYSORE 9 JUNE 1936

SIR,

In continuation of my letter No.773 dated the 11th April 1936, I have the honor to forward herewith, for the information of Government, a copy of the Judgment passed in Second Appeal No.212 of 1933-34 on the file of the High Court of Mysore, (Government of Mysore VS. Saraf Venkatappa).

I have the honor to be,
Sir,
Your most obedient servant,

A R Nagesvara Iyer
Government Advocate.

CSN.

TYPING SECTION. 12 JUN. 1936 CIVIL & REV. SECTT.

NOTE—Contn. Sheet.

2982
26.7.[illegible]

File No. Law 109 of 1936.

General and Revenue Secretariat

From
the Govt Advocate
Letter no 261, dt 14-11-36
States that Govt are not liable to bear any costs of the opponents.

8) Subd for perusal with reference to para 4 supra.
Two cases for orders!

26/11

9) P.W.D. for Kino permanent Gen. Secy).

BKR 26.11.36

10) Their costs, how much is it? Ind

11) To be submitted after the other file is disposed of.

BKR 2.12.36

GENERAL SECRETARY. 27 NOV. 1936 719

In the question of the remuneration payable to the G.A has been disposed of in the linked file (Law 9-35-34) this file is subd for orders with reference to para-11 supra.

2/3/38

13) The appeal has cost- the Govt Rs 141-11-0. (Rs 116-11-0 for filing the appeal & Rs 25-0-0 for Advocates fees).
Reference - Para 10

BKR 5.3.38

Gen Secy 14) Shd Govt bear the expense or is any officer to be held responsible to the loss? Ind 8/3

GENERAL SECRETARY. 8 MAR. 1938 5.076

15) Some instance in manner prescribed these warrants seem neces Ind 8/3 BKR 8.3.

5885/837

(4

General and Revenue Secretariat | Secretariat File No. 109 of 1936. | [App. F. III—2

Serial No.

16) It seems to me that Govt cannot bear the expenses. The High Court has held that the correct order of attachment was issued only on 31st of May 1930, and that has been only given effect to, and that the Govt cannot be held liable for not obeying the prior orders as they were not in accordance with Sec. 60 C.P.C. In these circumstances, the officer or officers who disobeyed the earlier orders cannot therefore be held liable. It is true that as observed by the High Court, these officers should have been more prompt in sending replies to the Court; but that circumstance does not seem sufficient to make them liable for the costs of these proceedings.

Flag K.

17) Regarding the issue of instructions re the manner of executing these orders, I beg to submit that in 1931, a circular order has been issued for the guidance of the disbursing officers (See flag L). I think therefore it is enough if their attention is drawn to this circular.

GENERAL STORE. 11 APR. 1938 5880

L.S.G. Govt. Secy.)

BNR 11.4.38

12.4.38

BNR 12.4

NOTE—Contn. Sheet.

WD 0284—GPB—30,000—13-8-37

circular in re: the ~~5886~~ 3/38 ~~Acceptance~~ of
Warrants of attachment.

(5)

File No. Law 109 of 193 6

General and Revenue Secretariat

Subd with a dft for Consideration.

For approval

BMR 27-4

Gen Secy) Ind 27/4 BMR 27-4

First Member)

JDR 27/4 Ind 28/4

DS Rao BMR 28/4

GENERAL SECRETARY. 27 APR. 1938 6292

To

The Deputy Comm^rs
The Heads of Depts

circular No. P. 6062, dated 2nd May '38.

Invites the attention to circular No. P. 6235-95 Laws 100-35-15, dt 31st March '31, and states that any omission in the matter will make the Disbursing officers personally liable.

B 24-5-38

2982 6-36

In reply please refer to No. 861

OFFICE OF THE GOVERNMENT ADVOCATE IN MYSORE,

Bangalore, 14th November 1936.

Law 109-36-3

FROM

A. R. NAGESVARA IYER, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

GENERAL SECRETARY 17 NOV 1936

The General Secretary to the Govt.
of H. H. the Maharaja of Mysore,
Bangalore.

SIR, BSR 17.11.36

'V'

With reference to your letter No. P. 8254, dated the 13th June 1936, re: Second Appeal No. 212 of 1933-34 on the file of the High Court of Mysore, (Government of Mysore Versus. Saraf - Verkatappa) I have the honor to state that as according to the order of the Court each party is to bear his own costs tnroughout, Government are not liable to bear any costs of the opponents in these - proceedings.

I have the honor to be,

Sir,

Your most obedient servant,

A. R. Nagesvara Iyer

Government Advocate.

(7

IN THE HIGH COURT OF MYSORE AT BANGALORE

Thursday, the 26th day of March 1936.

PRESENT

MR.JUSTICE K. SHANKARANARAYANA RAO

And

MR.JUSTICE N.K. SREENIVASA RAO.

Second Appeal No. 212 of 1933-34.

The Government of Mysore by the Chief Secretary .. Opponent.. APPELLANT.

(BY Mr.A.R.Nagesvara Iyer, Govt.Advocate)

-Vs-

Saraf Venkatappa ... Petitioner.. RESPONDENT.

(By Mr. P.Vasudevamurthi)

Second Appeal against the order, dated 20th December 1933 made by the District Judge of Shimoga in Regular Appeal No. 168 of 1931-32 modifying that (dated 23rd March 1932) of the Munsiff of Shimoga in Execution Case No. 15 of 1928-29.

This Appeal coming on for hearing this day, the Court delivered the following :-

JUDGMENT

This appeal by the Government arises out of a suit filed by the Respondent against one K.Gurumoorthy Rao, a clerk in the Guhbi Division Office at Tumkur, in Original Suit No. 43 of 1923-24 and Execution Case No. 15 of 1928-29. He obtained an order for the attachment of one-half of the Judgment-debtor's salary which was stated in the execution application to be more than Rs 60/- a month. The attachment warrant was

was served on the pay disbursing officer eventually on 18-8-1929. It would appear that the Judgment-debtor's pay was only Rs 40/- and that out of the attachable moiety of Rs 20/-, Rs 10/- were already being attached in satisfaction of a decree obtained by the Shimoga Co-operative Bank against the Judgement-debtor. The Sub Division Officer returned the attachment warrant on 29-9-1929 with a statement of particulars relating to the previous attachment stating that it would be hard to attach Rs 20/- as ordered. The Decree-holder persisted in contending that the salary of the official was Rs 50/- and finally on 18-3-30 the Court issued an order for attachment of Rs 15/- out of his salary being one half of the salary minus Rs 10/-. This was unfortunately addressed to Madhugiri Sub Division Officer under the impression that the official concerned was in that office. The order of attachment was returned to the Court on 20th May 1930 stating that the salary was not Rs 50/- a month but only Rs 40/- and that the attachable portion available was only Rs 10/-. It was finally on the 31st May 1930 that an order was sent to attach Rs 10/-. The amount was sent from July 1930. The Decree-holder then filed an application under Order XXI rule 48, C.P.C. to say that there was delay in sending the amount from 18-8-29 to 2-7-1930, i.e., for 11 months and that the Government were responsible for the payment of Rs 110/- to the Decree-holder.

The learned Munsiff held that the order of the Court to attach Rs 20/- was in excess of the attachable proportion that could have been legally attached and that therefore the order did not bind the Government and disallowed the application. The learned District Judge in appeal held that the disbursing officer was not responsible for not giving effect to the warrant till 28th May 1930

(9

1930 on which date a correct order was sent by the Court to attach Rs 10/- only. He also held that the only fault of the disbursing officer was that he delayed in sending a reply from 7th February 1930 till 20th May 1930 and that if a reply had been promtly sent there was a chance of the Decree holder recovering Rs10/- a month from March alone for 4 months and that he was liable for 4 months pay at Rs 10/- per month from March 1930.

It will be noticed that the order issued on 7th February 1930 was to attach and send Rs 15/- per month and that could only have been issued on the assumption that the Judgment-debtor's salary was Rs 50/-. But his salary ~~was Rs 50/-~~ having been only Rs 40/- and Rs 10/- having been already under attachment at the instance of the Co-operative Bank the Court could have attached only the remaining attachable portion, namely, Rs 10/- at most. The order to send Rs 15/- per month is therefore not a correct order. It was only on the 31st of May 1930 that an order was issued to attach Rs 10/-. The ~~pay~~ pay for the month of May due in June was not attached but the pay for the month of June payable in July has been attached and sent. The Government cannot therefore be legally held responsible for not obeying the order. It was not in accordance with section 60 of the Civil Procedure Code.

Under the circumstances, the order of the learned District Judge cannot be supported and must therefore be set aside. As regards the oosts of this Appeal, there has been considerable delay in informing the Court from time to time though the Decree-holder also has contributed to the delay in persisting and saying that the Judgment-debtor's salary exceed Rs 40/-. The attachment warrant was served on 18-8-1929. It was not till 29-9-30 that a reply was sent. Again there was no reply from 7th February 1930 till 20th May 1930. In the second place even the portion which could have been legally attached from the Judgment-debtor's salary

(10

salary was not held back subject to the orders of the Court.

Under the circumstances we direct each party to bear his own costs throughout. The order of the learned District Judge is set aside.

sd/-K.Shankaranarayana Rao

JUDGE

sd/- N.K. Sreenivasa Rao

JUDGE

"Copy"

Deputy Registrar.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Bangalore, dated 2nd May 1938.

No. P. 6062-121/Law 109-36-4

CIRCULAR.

Attention is invited to circular No.P.6235-95 Law 100-30-15, dated 31st March 1931 issuing instructions to all disbursing officers in the State in regard to the compliance with warrants of attatchment of the pay of officials under them. It has since come to the notice of Government that instructions are not being strictly observed. Disbursing officers are reminded that any omission or negligence in the matter will make them personally liable to make good the loss that may be caused to Government thereby.

M. VENKATESA IYENGAR,
General Secretary to Government.

To

The Deputy Commissioners of Districts.
The Heads of Departments.

8x

(12

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

General and Revenue Secretariat,

No. P 6062-121
Law 109-36-4

Bangalore, dated the ~~30th April~~ 2nd May 1936.

CIRCULAR.

Attention is invited to circular No.P.6236-96 Law 100-30-15, dated 31st March 1931 issuing instructions to all disbursing officers in the State in regard to the compliance with warrants of attachment of the pay of officials under them. It has since come to the notice of Government that instructions are not being strictly observed. Disbursing officers are reminded that any omission or negligence in the matter will make them personally liable to make good the loss that may be caused to Government thereby.

General Secretary to Government.

To

The Deputy Commissioners of Districts.
The Heads of Departments.

n.v.k.10.

(13

Appendix F G—1]

SUBJECT .....

.....

.....

Section Laws

File No. 109-36

Serial No. 4

Diary No. of letter replied to.....

No. P6062-121.

To

Circular.

General and Revenue Secretariat

( )

the *193* . L

Attention is invited to circular No. P.6235-95 Laws 100-3-15, dated 31st March 1931 issuing instructions to all disbursing officers in the State in regard to the compliance with warrants of attachment of the pay of officials under them. It has since come to notice of Govt that those instructions are not being strictly observed. Disbursing officers are reminded that any omission or negligence in the matter will render them personally liable to make good the loss that may be

Date of issue..... 2.5.38

Signed by ..... Mr PKR

List of enclosures.....

Copied by .....

Examined by.....

(14)

caused to Govt thereby the character.

~~By order~~

BKR
27.1.1

for
V/14
General Secretary.

To

(1) The Deputy Commrs of Districts.

(2) The Heads of Depts